

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:10CR387
)	
Plaintiff,)	JUDGE SARA LIOI
)	
v.)	GOVERNMENT'S RESPONSE TO
)	DEFENDANT DIMORA'S MOTION FOR
)	RELEASE FROM CUSTODY
)	
JAMES C. DIMORA, et al.,)	
)	
Defendants.)	

Now comes the United States of America, by and through its attorneys, Barbara L. McQuade, United States Attorney, and Assistant United States Attorneys Antoinette T. Bacon, Nancy L. Kelley, and Ann C. Rowland and hereby responds to Defendant Dimora's Motion for Release from Custody (Doc. 756). This Court properly found pursuant to 18 U.S.C. § 3143 that Defendant Dimora failed to meet his burden by clear and convincing evidence that any set of conditions will reasonably secure his presence for future proceedings. Four of the five grounds for relief cited by Defendant Dimora were raised at the bond hearing and rejected by this Court. The new ground, Dimora's health, is an unsupported conclusion. Considering that the only new issue is unsupported by affidavits, medical documents, or even specific facts, this Court should continue to order Dimora detained without further hearing.

1. Dimora's Association with Cuyahoga County

First, Dimora argues again that his association with the County will ensure his appearance at future proceedings. This Court considered and rejected this argument. Indeed, this Court presided over a lengthy trial at which the evidence demonstrated that Dimora's

association with Cuyahoga County enabled the criminal conduct that led to his convictions. The jury found proof beyond a reasonable doubt that Dimora used the power and influence of his County office to enrich himself and his designees, and that he did so for nearly a decade. His influence reached to every aspect of County government, from contracts and jobs at the Engineer's Office, to jobs at the Auditor's Office, to matters before County agencies, to cases pending in County courts, to County grants, loans, contracts and jobs. His association with the County even facilitated the obstruction, by Dimora collecting information about County contracts and loans related to DAS Construction from County employees. Moreover, his connections to municipalities located within the County enabled him to commit further crimes. For example, Dimora's control over municipal funding facilitated the Neiheiser, Coppers, and Zavarella schemes. Dimora's ties to the City of Bedford Heights enabled him to obtain information related to media inquiries, which led to further obstruction. The same associations that enabled Dimora to commit these crimes and cover them up are the same connections that could help him avoid sentencing and detention in this case.

Most disturbing is Defendant Dimora's repeated attempts to influence the judicial system. The evidence at trial revealed that Dimora contacted then-Judge Bridget McCafferty to help Pumper gain an unfair advantage in a case pending in her court. The Government's Motion in Limine revealed eight additional cases Defendant Dimora tried to influence. See Doc. 532 at 27-31. By using his power to try and manipulate the judicial system, Defendant Dimora showed his disrespect for the law, the judicial system, and the Court's power. A conservative estimate of the Guidelines (for the non-tax counts) that may apply at sentencing follows:

Base Offense Level	14	§ 2C1.1(a)
More than One Bribe	2	§ 2C1.1(b)(1)
Offense Involved Elected Official	4	§ 2C1.1(b)(3)
Value of Anything Obtained by a Public Official or Others Acting with a Public Official (More than \$200,000)	12	§ 2C1.1(b)(2)& §2B1.1(b)(1)(G)
Role in the Offense	4	§ 3B1.1(a)
Obstruction of Justice	2	§ 3C1.1
Total Offense Level	38	235-293 Months

This calculation was based solely on the amount of the bribes. When the value of the benefit conferred to the bribe payor is considered (see U.S.S.G. § 2C1.1(b)(2)), the loss calculated could rise significantly, which could add additional levels and increase his sentence.

Dimora repeatedly tried to manipulate and control the judicial system to his advantage. He used the power and influence of his County office to help him fix court cases. He now asks the Court to trust him, at a time when he faces a significant sentence. The Court has already found that Dimora is not deserving of that trust. Further hearing on this issue is not required.

2. Dimora's Residence in Cuyahoga County

Second, Dimora cites his residence in the County as evidence that he will remain within the Northern District of Ohio. The Court considered and rejected this argument. Since that ruling, Dimora agreed to forfeit his ownership interests in the residence, which in large part, was built through bribery. See Doc. 751. Thus, he now has no financial incentive to remain in the County. Further hearing on this ground is not required.

3. Dimora's Network of Family and Friends

Third, Dimora cites to his network of family and friends in support of his request for pre-trial release. By the time of this Court's detention ruling, the Court had heard extensive evidence of how Dimora's family and friends were essential parts of his conspiracies. His closest friends, Michael Gabor, Frank Russo, Kevin Kelley, Steve Pumper, and Jerry Skuhrovec have all been convicted of federal offenses and face significant terms of imprisonment. Other friends, such as Nick Zavarella, have been convicted of federal offenses and testified at Dimora's trial. Another close friend, Michael Forlani, awaits trial on RICO Conspiracy charges. The conditions of bond foreclose relationships with them, so these "friends" would be unable to ensure Dimora's presence at future proceedings. Moreover, his relationships with them would provide no disincentive to flee, as he cannot presently communicate with them.

The evidence at trial demonstrated that other friends and family members were involved in criminal activity with Dimora. For example, at trial, Frank Russo testified about Dimora family members receiving jobs at Maple Heights City Schools in return for Dimora giving County jobs. As another example, in an attempt to obstruct the investigation, Dimora caused his wife to write each of the May 23, 2008 checks to contractors. In another example, Dimora's friend, Rick Capone, served as a conduit between Pumper and Dimora during the Spring of 2008. Friends and family members such as these, who were willing to help him obstruct the investigation, are more likely to help Dimora flee than to serve as an incentive to remain in the District.

Prior pleadings also reveal Dimora friends and family members being involved in Dimora's criminal activity. As stated in the Government's Motion in Limine, Dimora tried to fix

a divorce case to benefit his family. Doc. 532 at 29-30, Item 10-I . Several Dimora family members discussed this divorce case. In addition, as further outlined in the Motion in Limine, Lori Dimora took messages from those seeking her husband's help fixing County court cases. Id. at 29, Item 10-H. Rather than helping to keep Dimora on the straight and narrow, his family and friends helped Dimora commit crimes.

Dimora's assertion that his family ties would keep him in this District is belied by his personal behavior. He repeatedly engaged in conduct showing an utter disregard for his family's welfare. He modeled despicable conduct for his children and demonstrated total disrespect for his wife. At a hearing, the Government would play additional calls demonstrating that he put his own desires ahead of his family's wishes and encouraged his children to deceive others for their own benefit.

Considering their role in his criminal activity and/or inability to prevent him from committing crimes, this Court should not trust that Dimora's friends and family are motivated to or capable of ensuring his appearance at future proceedings. This Court has considered Defendant's relationship with his family and friends in revoking his bond, and further hearing on this issue is not necessary.

4. Dimora's Prior Compliance With Pretrial Services.

Fourth, Dimora cites to his prior compliance with pretrial services, which the Court already considered. Dimora's prior compliance with pretrial services is not persuasive evidence of his future compliance. Dimora repeatedly proclaimed his innocence to the media, claiming that he would be exonerated at trial. Dimora's stated belief that the jury would acquit him of all counts in the indictment explains his prior compliance with pretrial supervision. Now that a jury

convicted Dimora on all but one count and he faces a minimum guidelines range of 235-293 months incarceration, Dimora's incentive to comply with supervision has disappeared.

Considering that Dimora faces a long term of imprisonment, has not been employed for over two years, has not looked for work or performed volunteer work (to the best of the Government's knowledge), has agreed to forfeit a substantial part of his assets, has adult children (one of whom moved out of state), has been convicted of trying to fix court cases, Defendant Dimora has failed to establish clear and convincing evidence that can satisfy this Court that he will appear for future proceedings. Further hearing on this issue is not necessary.

5. Others' Compliance with Bond Conditions Pending Sentencing

Fifth, Defendant Dimora stated that he could cite examples of people who complied with bond pending sentencing, a point which he raised at the bond revocation hearing. This Court is well aware that some people chose to follow the rules, while others do not. Others' conduct is irrelevant. This Court made a finding that Defendant Dimora failed to present clear and convincing evidence to meet his burden under § 3143. The unsupported conclusions and statements in his Motion do not support the Court revisiting its findings.

6. Dimora's Medical Needs

The only new issue presented in Dimora's motion was that his poor health would prevent his flight. Dimora's motion fails to identify any particular physical impairment, fails to include medical documentation and fails to explain how any alleged impairment would prohibit his flight.

None of the medical needs identified by pretrial services at the time of Dimora's arraignment supports Dimora's release from incarceration. Dimora's alleged medical condition

did not prevent him from committing crimes and did not prevent him from traveling to commit crimes (i.e. Las Vegas, Niagara Falls, Windsor). The Government knows of no special medical attention that the U.S. Marshals Service has been required to provide. In fact, the U.S. Marshals Service placed Defendant Dimora at a facility that is in close proximity to a medical center. Furthermore, his physical health did nothing to prevent Dimora from riding to Court every day on time and sitting through long days of testimony. If Dimora is healthy enough to drive from Cleveland to Akron, during the Northeast Ohio winter, sit through full trial days, and return back to Cleveland, then he is presumably healthy enough to drive to Canada, Mexico or another location to avoid the reach of this Court. Indeed, the defense did not present evidence or argument about Defendant's health during the argument regarding bond revocation. The present motion contains no specific, articulable facts about any newly discovered health condition, nor does it contain medical reports and documentation. Conclusory statements are not sufficient to justify a hearing.

The Government notes that others have fled this jurisdiction with medical conditions worse than Dimora. One example occurred in a case before Judge Nugent, United States v. Thomas G. Longo, 1:05CR505. Longo suffered from recurring urinary tract and bladder infections which required regular treatment and occasional hospitalization. He required a regular supply of specific sterile medical devices to treat his condition. Longo was a well-known attorney who practiced in the Northern District of Ohio, was a life-long resident, and had a wife, family, residence, and business connections throughout the Cleveland area. In 1997, he was convicted of misprision of a felony. In 2004, a search warrant was executed at his home following allegations of sexual imposition by a neighbor. He pleaded guilty to a misdemeanor

associated with that allegation. During the course of the 2004 search, numerous firearms and ammunition were found at his residence. During the course of pre-indictment plea negotiations following the execution of that search warrant, Longo fled to Mexico to avoid prosecution. During plea negotiations, Longo rejected a plea offer which would have put his advisory guidelines range at 46-57 months imprisonment. He was approximately 60 years of age at the time of the search. The U.S. Marshals Service spent over a year attempting to find and arrest Longo. The effort to locate him was time-consuming and expensive. Despite his medical conditions and his ties to the Northern District of Ohio, he had fled to Puerto Vallarta, Mexico under an assumed name. In his two previous cases, Longo had attended all court hearings and had surrendered to serve his sentence.

Longo suffered from significantly more serious health conditions than Defendant Dimora. Defendant Dimora does not require daily use of specific, sterile medical devices that may be difficult to locate outside the United States. He is ambulatory and mobile. Within a matter of hours, he can cross the border into Canada. Attorney Bobby Keith Moser, with children, lifelong community ties, and facing a long period of incarceration, fled to Madagascar through Canada. See United States v. Bobby Keith Moser, 03CR80660 (E.D. Mich.). The United States Government expended significant resources to locate Mr. Moser and secure his return.

Absent some specific information about a specific medical condition, this Court should not entertain another hearing on Dimora's bond. This Court has found that Defendant Dimora failed in his burden of proving by clear and convincing evidence that he would not flee. Defendant Dimora has provided no specific facts to disturb that conclusion.

7. Defendant's Access to Financial Support

Should the Court find that Defendant Dimora presented sufficient facts to justify a hearing, the Government respectfully asks this Court to conduct a detailed financial inquiry of the Defendant. The Government submits that such inquiry is necessary to ensure Defendant Dimora lacks the funds to flee the jurisdiction.

Following the County restructuring, Dimora lost his job as a County Commissioner and his last day of work was December 31, 2010. The Government is not aware of any income received by Lori or James Dimora from that time to present other than Dimora's monthly pension payments from his time as Bedford Heights mayor. In or around February 11, 2011, Dimora submitted a financial application listing his assets. Based on the limited assets listed, the Government agreed to subordinate its lis pendens on Dimora's residence, which allowed Dimora to obtain a mortgage in the amount of \$240,000. The United States believes that Dimora may have used some of that money to pay off a prior mortgage, with the remainder to pay for prospective attorneys' fees. Since that time, Dimora's attorneys have performed a tremendous amount of work to further his defense, including: (1) filing approximately 48 motions in this case and 15 responses to Government motions; (2) filing 3 motions in Case No. 1:11CR491; (3) expressing his intention to file post-trial motions in this case; (4) filing briefs and responsive pleadings in United States Court of Appeals for the Sixth Circuit (as recently as March 2012); (5) having three attorneys at trial every day for approximately 2 ½ months; (6) reviewing the voluminous discovery in meticulous detail, as reflected in the series of correspondence asking specific questions about specific pieces of discovery; (7) ordering expedited transcripts from trial testimony; (8) preparing a detailed Rule 29 motion; (9) interviewing two computer experts and

retaining one such expert; (10) interviewing dozens of potential defense witnesses; (11) preparing a large binder containing defense exhibits; and (12) hiring an out-of-state jury consultant. The Government questions whether Dimora had access to additional funds for his defense, as it would appear that these efforts would have consumed more than the proceeds of the loan on Dimora's residence.

If Dimora was able to induce others to contribute to his defense, he could probably convince them to support an effort to flee. The Government would ask the Court to require a detailed accounting of the expenses incurred and the source of payment for each expense and to make any other appropriate inquiry to satisfy the Court that Dimora has no other outside source of income available to him.

To conclude, this Court has already found that Defendant Dimora failed to present clear and convincing evidence that he will appear at future proceedings. His motion simply recycles the previous arguments made to and rejected by this Court. The only new ground, Defendant Dimora's health, is presented in conclusory fashion and fails to provide the Court with sufficient facts to warrant a hearing. Therefore, his motion should be denied without a hearing. If this

Court is inclined to hold a hearing, the Government requests this Court to conduct a full financial inquiry.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on this date, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

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